

15 MAR 2007



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In re Application of: :  
BJORCK, Lars, et al. :  
U.S. Application No.: 10/553,904 :  
PCT No.: PCT/EP2004/004429 :  
International Filing Date: 23 April 2004 :  
Priority Date: 23 April 2003 :  
Atty Docket No.: 053694-0131 :  
For: METHOD FOR IDENTIFYING AN :  
ANTI-STREPTOCOCCAL AGENT :  
AND ITS USE FOR TREATING :  
STREPTOCOCCAL INFECTIONS :

DECISION ON PETITION TO  
WITHDRAW HOLDING OF  
ABANDONMENT  
(37 CFR 1.181)

This decision is issued in response to the "Petition To Revive Unavoidably Abandoned Application Under 37 CFR 1.137(a)" filed 30 January 2007, treated herein as a petition under 37 CFR 1.181 to withdraw the holding of abandonment based on applicants' timely response to the Notification Of Defective Response (Form PCT/DO/EO/916) mailed 20 November 2006. No petition fee is required at this time.<sup>1</sup>

**BACKGROUND**

On 23 April 2004, applicants filed international application PCT/EP2004/004429. The international application claimed a priority date of 23 April 2003, and it designated the United States. On 04 November 2004, the International Bureau (IB) communicated a copy of the international application to the United States Patent and Trademark Office (USPTO). The deadline for submission of the basic national fee was thirty months from the priority date, i.e., 23 October 2005.

On 21 October 2005, applicants filed a Transmittal Letter for entry into the national stage in the United States accompanied by, among other materials, payment of the basic national fee.

On 29 March 2006, applicants filed executed declaration documents and a supplemental application data sheet (ADS).

On 27 April 2006, the United States Designated/Elected Office (DO/EO/US) mailed a "Notification To Comply With Requirements For Patent Applications Containing Nucleotide

<sup>1</sup> The \$500 petition fee filed with the present petition will be refunded to Deposit Account 19-0741.

And/Or Amino Acid Sequence Disclosures” (Form PCT/DO/EO/922) (hereinafter “Notification To Comply”) requiring submission of specified sequence listing materials.

On 17 July 2006, applicants filed a revised declaration executed by the inventors.

On 20 November 2006, the DO/EO/US mailed a “Notification Of Defective Response” (Form PCT/DO/EO/916) acknowledging applicant’s 29 March 2006 submission and indicating that the sequence listing requirements set forth in the Notification To Comply had not yet been submitted.

On 30 November 2006, the DO/EO/US mailed a “Notification Of Abandonment” (Form PCT/DO/EO/909) indicating that the application was abandoned for failure to file a response to the Notification To Comply mailed 27 April 2006.

On 20 December 2006, applicants filed a response to the Notification Of Defective Response including sequence listing materials and the petition considered herein. The petition asserts that the holding of abandonment is improper because applicants filed a timely response to the Notification Of Defective Response mailed 20 November 2006, and/or because applicants never received the Notification To Comply mailed 27 April 2006.

### **DISCUSSION**

Applicants argue that the 20 December 2006 submission of sequence listing materials was a timely response to the Notification Of Defective Response mailed 20 November 2006 and that abandonment of the application is therefore improper.

A review of the application file confirms that, on 20 December 2006, applicants filed a “Response To Notification Of Defective Response” that included the sequence listing materials required by the Notification To Comply mailed 27 April 2006 and the Notification Of Defective Response mailed 20 November 2006, including a Computer Readable Form (CRF) of the sequence listing. This response was timely filed before the expiration of the one-month deadline set forth in the Notification Of Defective Response.

The Notification Of Abandonment (Form PCT/DO/EO/909) mailed 30 November 2006, based as it was on applicants’ failure to timely file the required sequence listing materials, is properly vacated.

### **CONCLUSION**

Based on applicants’ timely response to the Notification Of Defective Response (Form PCT/DO/EO/916) mailed 20 November 2006, applicants’ petition for withdrawal of the holding of abandonment under 37 CFR 1.181 is **GRANTED**.

The Notification Of Abandonment (Form PCT/DO/EO/909) mailed 30 November 2006 is hereby **VACATED**.

The application is being referred to the National Stage Processing Branch of the Office Of PCT Operations for further processing in accordance with this decision.



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